

III. Violation

Based upon the stipulated facts, the Disciplinary Panel concludes that:

- 1.) Costello violated Exchange Rule 156(b) (made applicable to options via Rule 950(g)) by failing to honor a customer's request to cancel 20 YMM Sept 135 calls at 4 ½. Instead, Costello executed the order more than four (4) minutes after the cancellation request was received, as set forth in paragraphs 1.6 and 1.7 of the Stipulation.

IV. Penalties and Publicity

The Stipulation proposes that the Disciplinary Panel impose a \$2,000 fine for the above misconduct. At the hearing, the Parties urged the Disciplinary Panel to accept the proposed penalty as being appropriate to the facts and circumstances of this case. After consideration of the Stipulation and the agreed-upon penalty, the Disciplinary Panel finds the proposed penalty is at the appropriate level to be imposed in this proceeding and therefore accepts the penalty proposed in the Stipulation.

The Disciplinary Panel further finds that the results of this disciplinary proceeding should be publicly disclosed, as provided in Rule 12 of the Exchange Rules on Disciplinary Proceedings.¹

¹ Rule 12 exempts from publicity those cases where the Panel finds that the offense "related solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors." Those exemptions do not apply to the facts of this case.

V. Conclusion

Based on the foregoing, the Disciplinary Panel, by unanimous vote, accepts the Stipulation of Facts and Consent to Penalty and hereby imposes a fine of \$2,000 upon Costello.

FOR THE DISCIPLINARY PANEL

Jerome Nelson, Chair

Dated: December 24, 2003
Washington, DC

Copies to: Michael D. Pierson, Esq. (*via facsimile and first class mail*)
Paula A. Bosco, Esq. (*via facsimile, electronic mail and first class mail*)
Arlene Collins-Day (*via facsimile and first class mail*)

Disciplinary Panel
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	STIPULATION OF FACTS
OF	X	AND
GARY COSTELLO	X	CONSENT TO PENALTY
.....	X	Case No. 03-28

This proceeding was instituted by the American Stock Exchange LLC (the “Exchange”), against GARY COSTELLO (“Costello”) (CRD # 1178055), a regular member of the Exchange and registered Specialist on the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Costello pursuant to Article V, Section 2, of the Exchange Constitution in order to settle and conclude all disciplinary actions by the Exchange against Costello based upon or arising out of the facts hereinafter stipulated. Costello, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the findings of violations of the Exchange Constitution and Rules and to the imposition of the penalties hereinafter provided. Costello understands that this settlement is subject to approval by an Exchange Disciplinary Panel and by the Amex Adjudicatory Council and that, if so approved, shall constitute a final decision that may not be appealed by the parties. Costello understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of his disciplinary record and may be considered in any future proceeding brought by the Exchange.

STATEMENT OF FACTS

- 1.0 During all relevant periods herein, LETCO Specialist, LLP (“LETCO”) was a regular member organization of the Exchange.
- 1.1 During all relevant periods herein, Costello was registered with the Exchange as a Specialist and was actively engaged as a member of LETCO on the Floor of the Exchange.
- 1.2 During all relevant periods herein, Exchange Rule 156(b) (made applicable to options via Rule 950(g)) provided:
- A broker handling a limited price order is to use due diligence to execute the order at the limit price, or at a better price, if available to him under the published market procedures of the Exchange.
- 1.3 On August 22, 2000 (the “Trade Date”), the Exchange received a telephone complaint from a customer who alleged that Costello failed to honor the customer’s cancel order to buy 20 YMM¹ Sept 135 calls at 4 ½. Instead, Costello executed the order, despite having received the cancel request more than four (4) minutes before he executed the trade.
- 1.4 On the Trade Date, at 10:15, the YMM Sept 135 calls were offered at 4 1/8 – 4½, reflecting a customer order that was received at 10:07 to sell eleven (11) contracts at 4½. At 10:22, a limit order (not the customer’s) was entered through REDI² to buy 20 contracts at 4 ½.
- 1.5 At 10:22:39, the customer’s order was also entered through REDI to buy 20 contracts at 4½. During the same minute, two (2) additional limit orders were placed by different customers: one was for the purchase of 5 contracts at 4 ½ and the other was for purchase

¹ Denotes the option symbol for Yahoo! Inc.

² Spear, Leeds & Kellogg

of 1 contract at $4 \frac{1}{2}$. Thus, at 10:22, there were four outstanding limit orders on Costello's book to purchase a total of 46 YMM contracts.

- 1.6 At 10:22, the market was requoted $4 \frac{3}{8} - 4 \frac{1}{2}$. Between 10:22 and 10:23, all four of the outstanding limit orders entered cancellation requests, including the customer's order to buy 20 YMM Sept calls at $4 \frac{1}{2}$, the cancellation request for which was entered at 10:23:28.³
- 1.7 At 10:23, 11 contracts traded at $4 \frac{1}{2}$, filling the aforementioned customer order that was received at 10:07. At 10:24, the market was requoted $4 \frac{1}{2} - 4 \frac{3}{4}$, reflecting the previously mentioned 4 buy orders at $4 \frac{1}{2}$, including the customer's order. At 10:26, the market was requoted $4 \frac{1}{2} - 4 \frac{5}{8}$, which again reflected the four buy orders. At 10:27:57, and approximately 4 minutes and 29 seconds after the customer entered a cancel request on its order, all four buy orders were executed (total of 46 contracts) at $4 \frac{1}{2}$. At 10:28, all of the $4 \frac{1}{2}$ buy orders received Too-Late-To-Cancel messages.
- 1.8 Following the customer's complaint, Exchange staff contacted Costello on the Trade Date to inquire about the circumstances surrounding the customer's order. Costello stated that the trade reports may have been delayed while the $4 \frac{1}{2}$ bid orders were being allocated that morning. Costello also stated that since the orders were executed as part of a block trade print, the book may have already been "frozen"⁴ to allocate the customer's trade when the customer's cancellation request was received, and thus, Costello would not have seen the cancel requests until after returning to his "ack box."⁵ Exchange staff

³ Of the four outstanding limit orders, one order entered a cancel request prior to the market requote at 10:22, and the three remaining orders entered cancel requests after the requote, including the customer's order, which entered a cancel request at 10:23:28.

⁴ A specialist's book "freezes" when the specialist goes into the execution template.

⁵ The term "ack box" refers to the specialist's acknowledgement box, which is the screen that the specialist uses at his/her post to view customer orders. Once a customer order comes to the Exchange, it is routed to the specialist's

noted, however, that all of the orders were reflected as part of the displayed bid/quote at 10:24, and all of the cancellation requests had been received prior to that time.

Additionally, the customer's bid at 4 ½ was executed at 10:27:57, 4 minutes and 57 seconds after the cancellation request was entered, thus, Costello's book would have to have remained "frozen" for almost four (4) minutes. Notwithstanding the foregoing, Costello refused to cancel or adjust the customer's trade.

CONCLUSION:

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may conclude that:

- 1.9 Costello violated Exchange Rule 156(b) (made applicable to options via Rule 950(g)) by failing to honor a customer's request to cancel 20 YMM Sept 135 calls at 4 ½. Instead, Costello executed the order more than four (4) minutes after the cancellation request was received, as set forth in paragraphs 1.6 and 1.7.

"ack box" if it is not executed through AutoEx. The "ack box" allows the specialist to see any and all outstanding trades that require an execution.

DISCIPLINARY ACTION:

A Disciplinary Panel may impose the following penalty upon Costello:

- (a) a fine in the amount of \$2,000.

AMERICAN STOCK EXCHANGE LLC

By: _____

David Rosenstein
Vice President & Chief Counsel
Enforcement Department

Agreed to on this _____ day of November 2003.

Gary Costello